O. Firewood and Charcoal Trade/45-

1945. **File No.**

Legal Department-

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Subject:— Opinions under the Bombay Firewood Trade Licensing Order, 1944 and the Bombay Charcoal Trade Licensing Order, 1944

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C O N T E N T S.

Legal Department File No. O. Firewood & Charcoal Trade/45.

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Office of the R.L.A.

Caluse, 11 and 11A of the Bombay Firewood Trade Licensing Order, 1944, and the Bombay Charcoal Trade Licensing Order, 1944, respectively provide for power of Government to give general or special directions to an importer, wholesaler, retailer or producer with regard to the import, receipt, storage, purchase, sale, transport of firewood and charcoal and the keeping of books, accounts pertaining thereto as it may deem fit. In the forms of license prescribed those Orders licenses are required to submit a correct statement of their stocks every month to the licensing authority. The District Magistrate and Controller of Prices, Poona, considers that the licenses should be required to submit weekly returns and proposes to issue an order under rule 81(2) of the Defence of India Rules accordingly so that he might take steps to cancel their licenses on their failing to submit weekly returns. F.D.(Supply) presumes that directions can be issued under clauses 11 and 11A of the Bombay Firewood Trade Licensing Order and the Bombay Charcoal Trade Licensing Order to submit weekly returns, failing which their licences can be cancelled. The R.L.A. is requested to state whether the presumption is correct or whether it is necessary for the District Magistrate to issue a spparate order under the Defence of India Rules.

2. The presumption made by F.D.(Supply) is not correct clause(e) of rule 81(2) of the Defence of India Rules makes a distinction between books, accounts etc. and returns. The words "keeping of books, accounts" in clause 11 and clause 11A of a Bombay Firwood Trade Licensing Order and the Bombay Charcoal Trade Licensing Order respectively cannot cover the submission of returns. Consequently no general or special orders under those clauses can validly be issued requiring the licenses to submit weekly returnes unless both the Orders are suitably amended.

P.T.O.

C/3. The powers of the Provincial Government under rule 91(2) of the defence of India Rules being validly delegated to District Magistrates, it would be competent for the District Magistrate to pass under clause(e)of that rule an order requiring the licensees to submit weekly returns. The District Magistrate and the Progincial Government having concurrent jurisdiction the provision in the licenses for the submission of monthly returns and the order of the District Magistrate for the submission of a weeklu returnsx can stand side by side, in which case the licenses will have to submit a monthly as well as weekly returns. If montly returns are unnecessary, the District Magistrate may issue an office order that no steps would be taken for failure to submit montly returns. On the District Magistrate passing an order under clause(e) of rule 81(2) of the Defence of India Rules as stated above the licensees would be liable to be prosecuted for default in submitting the weekly returns; but their licenses cannot be cancelled.

Sd/- P.M.M.
17-8-45

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 5884,dated 9th August 1945.

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether under the Bombay Firewood Trade Licensing Order, 1944, a person holding a retailer's license can be granted also a producer's license.

2. The terms "producer", "retailer" and "wholesaler" have been defined in sub-clauses (v)(vi) and (vii) of clause 2 of the Bombay Firewood Trade Licensing Order, 1944. "Producer" means a person who produces firewood on his own account or in partnership with any other person for sale; "retailer" means a person, other than an importer, producer or wholesaler who engages on his own account partnership with any other person in the business of selling firewood otherwise than for the purpose of resale; and "wholesaler" means a person other than an importer, retailer, or producer who carries on the business on his own account or in partnership with any other person or persons of selling firewood for the purpose of resale. Clause 7 provides that no person shall after the fifteenth day from the date on which the Order comes into force in any local area carry on in such local area the business of a producer except under and in accordance with the conditions of a valid license in Form H. Form H is the Producer's License. Condition 2 of this Form lays down that the licensee shall produce firewood at the place or places specified in condition 1 and shall not sell the same except to a consumer at the site of production or a wholesaler or importer. The Order does not expressly prohibit a retailer from being a producer, but the scheme of the Order appears to contemplate such prohibition. This inference derives support from the defini-

tion of the term "retailer" which excludes a producer and is further reinforced by condition 2 of the Producer's Licenses in Form H which by implication prohibits a producer from selling in retail except to a consumer at the site of production. Even assuming that a person can engage in both businesses, that is, the business of a producer and retailer, I cannot see how from the administrative point of view it can be practicable to allow a retailer to be a producer, for it would be extremely difficult to check up his stocks of firewood and in the event of his holding stocks in excess of the quantity required for the purpose of his business under clause 16 it would be impossible for the checking authorities to say whether the excess stocks were held by the licensee qua retailer or qua producer. Moreover since a producer can sell his firewood to a consumer at the site of production or to a wholesaler or importer it would be administratively inadvisable to grant a producer's license to a retailer and thereby facilitate clandestine sales. Having regard to the scheme and object of the Order, it seems that though the point is not quite free from doubt a retailer cannot and ought not to be granted a producer's license. That apart, the licensing authority has power to refuse to a retailer a producer's license if it is deemed expedient: See Public Prosecutor vs. Venkayya 1944 Mad. 448.

Sd/- P.N.M. 16/8/45

Remembrancer of Legal Affairs.

U.R. to F.D.(S) No. 6144 dated the 20th August 1945.

KAN/9-7.
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Office of the R.L.A.

In cases where it is considered necessary that a producer should also be a retailer there is no objection to granting him a retailer's license subject to the condition that his business premises for each should be separate.

Sd/- P.N.M. 27/2/46

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No.1645, dated the 27th February 1946.

KAN/10-7.
4 c.